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SERVICE DATE - JULY 17, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34053 (Sub-No. 1)

UNION PACIFIC RAILROAD COMPANY—TRACKAGE RIGHTS EXEMPTION—  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: July 10, 2001

By petition filed June 8, 2001, Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railway Company (BNSF) (collectively, petitioners) request that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 34053<sup>1</sup> to extend only until November 30, 2001.

According to petitioners, the trackage rights arrangement exempted in STB Finance Docket No. 34053 is necessary because UP will be performing maintenance work on its rail lines and UP will utilize the trackage rights over BNSF's line as an alternate route for UP's traffic during that time. However, petitioners state that BNSF is only willing to grant temporary operating rights on its trackage during the periods of maintenance activity on UP's trackage. Petitioner maintain that, without approval of temporary trackage rights, it is unlikely that any other arrangement can be reached to allow UP to operate over BNSF's line, and UP would face the possibility of severe operational problems on the trackage for which maintenance is scheduled.

DISCUSSION AND CONCLUSIONS

Although the parties have expressly agreed on the term of the proposed trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33879 (Sub-No. 1) (STB served June 23, 2000), The

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<sup>1</sup> On June 8, 2001, UP filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to grant temporary overhead trackage rights to UP over 235 miles of BNSF's rail line between BNSF milepost 885.2 near Bakersfield, CA, and BNSF milepost 1120.54 near Stockton, CA. See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34053 (STB served June 22, 2001). The trackage rights agreement is scheduled to expire November 30, 2001. The trackage rights operations under the exemption were scheduled to be consummated on June 17, 2001.

Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–Union Pacific Railroad Company, STB Finance Docket No. 33833 (Sub-No. 1) (STB served Feb. 4, 2000); Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33748 (Sub-No. 1) (STB served June 15, 1999); and The Burlington Northern and Santa Fe Railway Company–Trackage Rights Exemption–The Union Pacific Railroad Company, STB Finance Docket No. 33699 (Sub-No. 1) (STB served Feb. 5, 1999).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line as the trackage rights that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34053 to expire on November 30, 2001.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 34053, as discussed above, to permit the trackage rights to expire on November 30, 2001.
2. Notice will be published in the Federal Register on July 17, 2001.
3. This decision is effective on August 16, 2001.

4. Petitions to reopen must be filed by August 6, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary